IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8637 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LEGAL HEIR AND REP. OF DECD. THAKOR RANCHHODJI MALAJI & 16 - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR SHAKTISINH GOHIL for Petitioner(s) : 1 - 17.
MR MENGDEY, AGP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 06/07/2006

ORAL JUDGMENT

1. Mr.Gohil, learned Counsel for the petitioners, states that in view of the office objections, he

has already filed one-page petitions for petitioners No.2 to 17. However, he is not having the numbers. Office shall verify the same and if the numbers are not given, numbers will be given and will be treated as disposed of with this matter.

2. **Rule**. Mr.Mengdey, learned AGP waives service of notice of rule on behalf of the respondent State Authorities. With the consent of the learned Counsel appearing for both the parties, the matter is taken up for final hearing today.

3. The petitioners have preferred the petition for appropriate directions to the respondent Authorities to give clear and vacant possession of the land admeasuring as per the order dated 11.5.1974 to the petitioner and to give Sanad in respect of the said land.

4. Heard Mr.Gohil, learned Counsel for the petitioners and Mr.Mengdey, learned AGP for the State Authorities.

5. Upon hearing the learned Counsel appearing for both the sides, it appears that there is no dispute on the point that there was a policy of

the Government vide order dated 10.9.1974 for allotment of alternative lands to the agriculturists of Gandhinagar whose lands were acquired for establishment of the Capital Project at Gandhinagar and such lands were to be given for resettlement of all those agriculturists whose lands were acquired. There is also no dispute on the point that the orders were passed for allotment of the lands.

6. The contention raised on behalf of the State Authorities is that the petitioners, who are agriculturists were intimated to pay occupancy charges at the relevant point of time and they did not pay the occupancy charges and, therefore, the lands were not allotted to them. Mr.Mengdey further submitted that no occupancy charge is paid and the lands were available with the Government, which has now been allotted to Jameen Gram Vikas Corporation for cultivation of grass. The panchnama dated 26.6.2006 of showing the position of the land is produced with the affidavit in reply.

7. Mr.Gohil, learned Counsel appearing for the

petitioners also pressed in service the similar orders passed by this Court in case of similarly situated persons namely; the agriculturists whose lands were acquired for Capital Project by the State Government and who were not allotted the lands and the directions were given by this Court for providing alternative lands for resettlement. The orders passed in Special Civil Application No.5528 of 2001 by this Court (Coram: M.S.Shah, J.) dated 16.4.2002, in Special Civil Application No.4041/2005 and allied matters by this Court (Coram: Akil Kureshi, J.) dated 6.7.2005 are produced on record and, therefore, it has been submitted that the similar directions may be given in the present petition also.

8. It appears that when the policy of the State Government of providing alternative lands to the agriculturists, whose lands were acquired for Capital Project is not in dispute and when it is also not in dispute that at one point of time the lands were ordered to be allotted to the petitioners, the right of the petitioners to get

the land for resettlement at least to the extent of areas, which are mentioned in the order dated 10.9.1974 cannot be obviated by the State Government by raising contentions that at the relevant point of time the occupancy charges were not paid by the agriculturists concerned. When such a contention is being raised on behalf of the State Government, the same has to be tested as normal prudence. If the agriculturists are to be allotted lands on the payment of occupancy charges at the rate of approximately Rs.120/- per acre, normally no agriculturists would decline the payment when such an area of land is being allotted. No satisfactory material is produced on record by the State Government to show that the communications were made to the concerned agriculturists in writing, who were allotted the lands and there was no compliance of payment.

9. Apart from the above, even if it is considered that due to any circumstances beyond the control the payments were not made, at the most the State Government may collect a reasonable

interest at the rate of 12% p.a., on such occupancy charges, but it would not be unreasonable for the State Government to contend that no land will be available for resettlement to such agriculturists, more particularly when the policy of the government is not in dispute.

10. It is true that a long period has passed after 1974 and during the said period the lands, which were earlier allotted to the petitioners, which are already allotted by the State Government to different agencies and, therefore, the said allotment already made prior to the filing of this petition may not be disturbed by this Court, but at the same time it would be required for the State Government to provide other alternative waste lands of the Government to the agriculturists, who are covered in the order dated 10.9.1975 for allotment of the same area after collecting the same occupancy charges with interest at the rate of 12% per annum from the date of the order till the actual payment.

11. In view of the above, I find that the following directions shall meet with the ends of justice:

(a) The District Collector – Respondent No.2 herein shall intimate to the concerned agriculturists or one successor on behalf of all successors, if any, if the concerned agriculturist has expired, whose names are mentioned in the order dated 10.9.1974 calling upon them to pay the occupancy charges with interest at the rate of 12% p.a., from 1974 till actual payment.

(b) The District Collector – Respondent No.2 herein shall in consultation with the State Government, will identify the lands to be allotted to the agriculturists, whose names are mentioned in the order dated 10.9.1974 as alternative lands. The aforesaid exercise shall be completed within a period of three months from the date of receipt of the order of this Court. After the lands are identified, the intimation as referred to herein above shall be given to the concerned persons within a period of one month thereafter.

(c) After the intimation given by the

District Collector, the concerned persons shall be required to deposit the amount within one month thereafter and after the amount is deposited with the interest as referred to herein above, the District Collector shall ensure that the possession such alternative waste lands are allotted of the equivalent areas through the Officer not below the rank of Mamlatdar within a period of three months from the actual deposit of the amount by the persons concerned.

12. The petitions are allowed to the aforesaid extent in terms of the aforesaid terms. Rule partly made absolute accordingly. Liberty to apply in case of difficulty. Direct service is permitted.

6.7.2006 **(Jayant Patel, J.)**

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